

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

**HRHH HOTEL/CASINO, LLC and
HRHH IP, LLC**

Plaintiffs,

V.

Civil Action No.

RED MERGANSER INC.,
ELIZABETH MCGURR, and
DOES 1-10, inclusive,

Defendants.

COMPLAINT FOR TRADEMARK INFRINGEMENT, FALSE DESIGNATION OF ORIGIN, TRADEMARK DILUTION, AND UNFAIR COMPETITION

Plaintiffs HRHH Hotel/Casino, LLC (“HRHH Hotel/Casino”) and HRHH IP, LLC (“HRHH IP”) (collectively “HRHH”) for their complaint against Defendants Red Merganser Inc. (“Red Merganser”) and Elizabeth McGurr (“McGurr”) (collectively “Defendants”), and Does 1-10, inclusive, allege as follows:

JURISDICTION AND VENUE

1. This action arises under the trademark and anti-dilution laws of the United States, 15 U.S.C. § 1051, *et seq.*, the trademark and anti-dilution laws of the Commonwealth of Massachusetts, M.G.L. ch. 110H, and under the statutory and common law of unfair competition. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1338(a) and (b), 28 U.S.C. § 1367 and 15 U.S.C. § 1121. This action arises under the laws of the United States.

2. Venue is proper under 28 U.S.C. §§ 1391(b) and (c) in this case because Defendants reside in this District and, on information and belief, Defendants are subject to personal jurisdiction in this District, and/or a substantial part of the events or omissions giving rise to property that is the subject of the action is situated in this District.

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PARTIES

3. Plaintiff HRHH Hotel/Casino is a Delaware limited liability company with its principal place of business in Las Vegas, Nevada. HRHH Hotel/Casino owns the Hard Rock Hotel & Casino Las Vegas located in Las Vegas, Nevada.

4. Plaintiff HRHH IP is a Delaware limited liability company with its principal place of business in Las Vegas, Nevada. HRHH IP owns certain intellectual property rights used in connection with the Hard Rock Hotel & Casino Las Vegas.

5. On information and belief, Defendant Red Morganser Inc. (“Red Morganser”) is a Massachusetts corporation with its principal place of business in Natick, Massachusetts, and does business in this District. On information and belief, Red Morganser does business as “LesbianNightlife.”

6. On information and belief, Defendant Elizabeth McGurr is an individual residing and having her principal place of business in Dedham, Massachusetts, and does business in this District. On information and belief, Elizabeth McGurr is a principal of Red Morganser.

7. Defendants are subject to personal jurisdiction in this District because they do business in this District and/or the claims arose in this District.

8. The true names, identities and capacities, whether individual, associate, corporate or otherwise, of defendants DOES 1 to 10, inclusive, and each of them (“the DOE Defendants”), are unknown to HRHH at this time, who therefore sues the DOE Defendants by such fictitious names. When the true names and capacities or participation of the DOE Defendants are ascertained, HRHH will amend this complaint to assert their true names, identities and capacities. HRHH is informed and believes and thereon alleges that each of the DOE Defendants sued herein is responsible for the wrongful acts alleged herein, and is therefore liable to HRHH in some manner for the events and happenings alleged in this complaint. HRHH is informed and believes and thereon alleges that at all times herein mentioned, the DOE Defendants were and are doing business and/or residing in this District.

FACTS

HRHH's Business and Trademarks

9. HRHH Hotel/Casino's Hard Rock Hotel & Casino Las Vegas is a world-renowned entertainment and vacation destination in Las Vegas, Nevada, and is a premier property that attracts a young, trendsetting, influential crowd.

10. The Hard Rock Hotel & Casino Las Vegas includes amenities and attractions like The Joint, Las Vegas's first live-music venue with a capacity 4,255 people; tens of thousands of square feet of convention and meeting space; several retail spaces; numerous restaurants, bars and clubs; gaming areas; and three towers of hotel rooms. The Hard Rock Hotel & Casino Las Vegas also features a complex of several pools.

11. HRHH is the creator and host of a daytime pool party held at the Hard Rock Hotel & Casino Las Vegas called “Rehab” (the “Rehab Pool Party”). The Hard Rock Hotel & Casino Las Vegas held the first Rehab Pool Party in 2004 and continues to hold the Rehab Pool Party to this day.

12. Since its inception, the Rehab Pool Party has been extremely popular. Originally held only on Sundays, the Rehab Pool Party is now held multiple times a week at the Hard Rock Hotel & Casino Las Vegas's Rehab Pool. The Rehab Pool Party has been the subject of substantial marketing efforts and significant press coverage, has been attended by celebrities and other notables, and has featured performances by some of the world's most famous musical artists. The immense popularity of the Rehab Pool Party has spurred many other major resorts in Las Vegas to launch their own pool parties, and has created a new genre of entertainment in Las Vegas referred to as "daylife."

13. HRHH is the owner of certain intellectual property rights derived from the Rehab Pool Party including the trademark REHAB in block letters and in a distinctive, stylized font (collectively, the “REHAB Marks”). HRHH owns common law rights in and federal registrations of the following REHAB Marks: REHAB in Class 29 for “[p]repared meals and entrees consisting primarily of eggs and vegetables,” Class 41 for

1 “[n]ightclubs” and “casino services; entertainment services, namely, conducting parties
2 featuring live and recorded music, entertainment, food and beverages; night club services;
3 dayclub services, namely, providing facilities for recreational activities, namely, poolside
4 and water activities,” and Class 43 for “hotel and resort services; restaurant services; bar
5 services; catering services” (U.S. Reg. Nos. 3,873,673 and 4,524,097); REHAB RX in
6 Class 41 for “[c]asino services; entertainment services, namely, conducting parties
7 featuring live and recorded music, entertainment, food and beverages; night club services;
8 dayclub services, namely, providing facilities for recreational activities, namely, poolside
9 and water activities” (U.S. Reg. No. 4,611,979); REHAB RX (Stylized) in Class 41 for
10 “seasonal poolside party held weekly with food, drinks and entertainment” and “[c]asino
11 services; entertainment services, namely, conducting parties featuring live and recorded
12 music, entertainment, food and beverages; night club services; dayclub services, namely,
13 providing facilities for recreational activities, namely, poolside and water activities” and
14 in Class 43 for “hotel and resort services; restaurant services; bar services; catering
15 services” (U.S. Reg. Nos. 3,182,848 and 4,615,774), REHAB RX SUNDAYS AT THE
16 POOL (Stylized) in Class 41 for “seasonal poolside party held weekly with food, drinks
17 and entertainment” (U.S. Reg. No. 3,170,859). True and correct copies of the certificates
18 of registration for the REHAB Marks are attached hereto as **Exhibit A**.

19 14. HRHH has licensed the REHAB Marks to third parties and has used the
20 REHAB Marks for clothing and other merchandise including, but not limited, towels, dog
21 tags, belt buckles, sun tan lotion, necklaces, wristbands, cowboys hats, pins, cameras, key
22 chains, bandanas, and drink “koozies.” In or around November 2008, a television show
23 based on the Rehab Pool Party, entitled *Rehab: Party at the Hard Rock Hotel*, premiered
24 on cable network TruTV (the “Rehab Show”). The popular reality television show aired
25 for three seasons.

26 15. By virtue of the popularity of the Rehab Pool Party, the REHAB-branded
27 merchandise, the Rehab Show, and the significant publicity and news coverage relating to
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1 the Rehab Pool Party, among other things, the REHAB Marks have developed secondary
2 meaning in the marketplace and have become famous.

3 **Defendants' and Their Infringing Actions**

4 16. On information and belief, Red Morganser is a company engaged in the
5 business of providing, among other things, entertainment and related marketing, planning,
6 promotion and advertising services for nightclub events, parties and other special events.
7 Red Morganser is the owner of a federal registration of the trademark LESBIAN
8 NIGHTLIFE in Classes 35 and 41. A true and correct copy of the certificate of
9 registration for LESBIAN NIGHTLIFE is attached hereto as **Exhibit B**. On information
10 and belief, Red Morganser owns and operates the website available at
11 www.lesbiannightlife.com.

12 17. Apparently since at least 2012, Red Morganser has organized and hosted
13 an annual "Rehab Pool Party Sunday" as part of its "LesbianNightLife Memorial Day
14 Weekend" event. McGurr is identified as the contact person for these events. On
15 information and belief, Red Morganser sells tickets to its "Rehab Pool Party Sunday," and
16 uses the pool party to promote the LesbianNightLife brand and drive traffic to the website
17 available at www.lesbiannightlife.com, where it hosts paid advertising and solicits
18 donations.

19 18. As soon as HRHH became aware of Defendants' unauthorized use and
20 infringement of the REHAB Marks, HRHH sent cease and desist notices to Defendants
21 demanding that they immediately cease their infringing activities.

22 19. Defendants have ignored HRHH's repeated demands and, on information
23 and belief, have scheduled, extensively marketed, and sold tickets to a new "Rehab Pool
24 Party Sunday" set to take place in Provincetown, Massachusetts on May 24, 2015.

25 **FIRST CAUSE OF ACTION**

26 **(False Designation of Origin and Unfair Competition – 15 U.S.C § 1125(a))**

27 20. HRHH repeats and realleges each and every allegation of paragraphs 1
28 through 19, above, as though fully set forth herein.

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1 21. Defendants' use of "Rehab Pool Party" is likely to cause confusion, or to
2 cause mistake, or to deceive as to the affiliation, connection, or association of Defendants
3 with HRHH and its REHAB Marks, or as to the origin, sponsorship, or approval of
4 Defendants' unauthorized pool party, website and other goods and services related thereto
5 by HRHH.

6 22. Defendants' acts of false designation of origin, affiliation, association, or
7 sponsorship and unfair competition violate 15 U.S.C. § 1125(a).

8 23. As a direct and proximate result of Defendants' wrongful acts, HRHH has
9 suffered and continues to suffer and/or is likely to suffer damage to its trademarks,
10 business reputation, and goodwill. Defendants will continue to use or, as applicable,
11 recommence use, unless restrained, of REHAB for their pool party, website and other
12 goods and services related thereto, which is confusingly similar to HRHH's REHAB
13 Marks and likely to be associated with HRHH, the Hard Rock Hotel & Casino Las Vegas
14 and the Rehab Pool Party. Such conduct will cause irreparable damage to HRHH.
15 HRHH has no adequate remedy at law and is entitled to an injunction restraining
16 Defendants, their officers, agents, and employees, and all persons acting in concert with
17 Defendants, from engaging in further acts of false designation of origin, affiliation,
18 association, or sponsorship.

19 24. HRHH is further entitled to recover from Defendants the actual damages
20 that it sustained and/or is likely to sustain as a result of Defendants' wrongful acts.
21 HRHH is presently unable to ascertain the full extent of the monetary damages that it has
22 suffered and/or is likely to sustain by reason of Defendants' acts of false designation of
23 origin, affiliation, association, or sponsorship.

24 25. HRHH is further entitled to recover from Defendants the gains, profits,
25 and advantages that Defendants have obtained as a result of their wrongful acts. HRHH
26 is presently unable to ascertain the extent of the gains, profits, and advantages that
27 Defendants have realized by reason of their acts of false designation of origin, affiliation,
28 association, or sponsorship.

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26. Because of the willful nature of Defendants' wrongful acts, HRHH is entitled to an award of treble damages and increased profits pursuant to 15 U.S.C. § 1117 and destruction of any physical goods bearing the REHAB mark under 15 U.S.C. § 1118.

27. HRHH is also entitled to recover its attorneys' fees and costs of suit pursuant to 15 U.S.C. § 1117.

SECOND CAUSE OF ACTION

(Trademark Infringement – 15 U.S.C. § 1114, M.G.L. ch. 110H and Common Law)

28. HRHH repeats and realleges each and every allegation of paragraphs 1 through 27, above, as though fully set forth herein.

29. Defendants have used in commerce, without HRHH's permission, the REHAB Marks and/or marks confusingly similar thereto, in connection with the sale, offering for sale, distribution, or advertising its pool party, website and other goods and services related thereto in a manner that is likely to cause confusion with respect to the source and origin of Defendants' goods and services and is likely to cause confusion or mistake and to deceive purchasers as to the affiliation, connection, approval, sponsorship, or association of HRHH, the Hard Rock Hotel & Casino Las Vegas and the Rehab Pool Party with Defendants and their goods and services.

30. Defendants' acts constitute infringement of the REHAB Marks in violation of the 15 U.S.C. § 1114, M.G.L. ch. 110H and the common law.

31. As a direct and proximate result of Defendants' wrongful acts, HRHH has suffered and continues to suffer and/or is likely to suffer damage to its trademarks, business reputation, and goodwill. Defendants will continue to use or, as applicable, recommence use, unless restrained, of REHAB or other marks confusingly similar to the REHAB Marks and will cause irreparable damage to HRHH. HRHH has no adequate remedy at law and is entitled to an injunction restraining Defendants, their officers, agents, servants, and employees, and all persons acting in concert with Defendants, from engaging in further acts of infringement.

32. HRHH is further entitled to recover from Defendants the actual damages that it sustained and/or is likely to sustain as a result of Defendants' wrongful acts.

HRHH is presently unable to ascertain the full extent of the monetary damages that it has suffered and/or is likely to sustain by reason of Defendants' acts of infringement.

33. HRHH is further entitled to recover from Defendants the gains, profits, and advantages that Defendants have obtained as a result of their wrongful acts. HRHH is presently unable to ascertain the extent of the gains, profits, and advantages that Defendants have realized by reason of their acts of infringement.

34. Because of the knowing and willful nature of Defendants' wrongful acts, HRHH is entitled to an award of punitive damages under the common law, and treble damages and increased profits under 15 U.S.C. § 1117 and M.G.L. ch. 110H § 14.

35. HRHH is also entitled to recover its attorneys' fees and costs of suit pursuant to 15 U.S.C. § 1117 and M.G.L. ch. 110H § 14.

THIRD CAUSE OF ACTION

(Dilution – 15 U.S.C. § 1125(c) and M.G.L ch. 110H)

36. HRHH repeats and realleges each and every allegation of paragraphs 1 through 35, above, as though fully set forth herein.

37. HRHH's REHAB Marks are inherently distinctive and have acquired distinctiveness through HRHH's extensive, continuous, and exclusive use of them and the amount, volume, and geographic extent of sales of goods and services offered under the marks.

38. HRHH's REHAB Marks have attained a high degree of actual recognition amongst the public.

39. HRHH owns federal registrations of the REHAB Marks on the Principal Register.

40. HRHH's REHAB Marks are famous and distinctive within the meaning of 15 U.S.C. §§ 1125(c)(1) and 1127 and M.G.L. ch. 110H and became famous prior to

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Defendants' first use in commerce of REHAB for their pool parties, website and related goods and services.

41. Defendants' use of REHAB is likely to impair the distinctiveness of, and harm the reputation of or tarnish, HRHH's REHAB Marks in violation of 15 U.S.C. § 1125(c) and M.G.L. ch. 110H.

42. Defendants' acts complained of herein are likely to damage HRHH irreparably. HRHH has no adequate remedy at law for such wrongs and injuries. The damage to HRHH includes harm to its trademarks, goodwill, and reputation that money cannot compensate. HRHH is, therefore, entitled to a preliminary and permanent injunction enjoining Defendants' use of REHAB, the REHAB Marks, or any marks confusingly similar thereto or dilutive thereof in connection with the promotion, advertisement, and sale of any products or services offered by Defendants.

43. HRHH is further entitled to recover from Defendants its actual damages sustained by HRHH as a result of Defendants' wrongful acts. HRHH is presently unable to ascertain the full extent of the monetary damages it has suffered by reason of Defendants' acts of dilution.

44. HRHH is further entitled to recover from Defendants the gains, profits, and advantages Defendants have obtained as a result of their wrongful acts. HRHH is presently unable to ascertain the extent of the gains, profits, and advantages Defendants have realized by reason of their willful acts of dilution. Because of the knowing and willful nature of Defendants' actions, HRHH is entitled to all remedies available under 15 U.S.C. §§ 1117 and 1118, and M.G.L. ch. 110H.

45. HRHH is also entitled to recover its attorneys' fees and costs of suit pursuant to 15 U.S.C. § 1117 and M.G.L. ch. 110H § 14.

FOURTH CAUSE OF ACTION

(Statutory and Common Law Unfair Competition)

46. HRHH repeats and realleges each and every allegation of paragraphs 1 through 45, above, as though fully set forth herein.

1 47. At all times relevant to this complaint, the Defendants have been engaged
 2 in trade or commerce within the meaning of M.G.L. c.93A.

3 48. By reason of all of the foregoing and that alleged below, Defendants have
 4 been, and are, engaged in unfair and deceptive acts and practices in violation of M.G.L.
 5 ch. 93A § 11 and acts of unfair competition in violation of the common law.

6 49. In addition to the other acts alleged herein, Defendants have engaged in
 7 unlawful acts by infringing and diluting the REHAB Marks and otherwise infringing
 8 HRHH's intellectual property.

9 50 In addition to the other acts alleged herein, Defendants have engaged in
 10 unfair acts by passing off or suggesting that their pool party, website, and other goods and
 11 services related thereto are associated, connected, or affiliated with, or sponsored or
 12 endorsed by, HRHH and by using names owned by HRHH.

13 51. In addition to the other acts alleged herein, Defendants have engaged in
 14 fraudulent acts because the actions alleged herein are likely to deceive consumers and
 15 other members of the public.

16 52. HRHH invested substantial time and money in the development of the
 17 Rehab Pool Party and the REHAB Marks, and Defendants used the foregoing to create,
 18 market, advertise, and sell their pool party, website, and other goods and services related
 19 thereto. Defendants have appropriated the foregoing without authorization from HRHH.

20 53. Defendants' acts complained of herein have damaged and will continue to
 21 damage HRHH irreparably. HRHH has no adequate remedy at law for these wrongs and
 22 injuries. The damage to HRHH includes harm to the REHAB Marks, goodwill, and
 23 reputation in the marketplace that money cannot compensate. HRHH is therefore entitled
 24 to: (a) injunctive relief restraining and enjoining Defendants and their officers, agents,
 25 servants, and employees, and all persons acting thereunder, in concert with, or on their
 26 behalf, from using the REHAB Marks or any mark, name, symbol, or logo which is
 27 confusingly similar thereto, in connection with the marketing or sale of any goods or
 28 services by Defendants; (b) HRHH's actual damages sustained as a result of Defendants'

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1 wrongful acts that said amount by trebled in accordance with Chapter 93A; (c) an
2 accounting of Defendants' profits derived from its infringing actions; (d) the award of
3 Defendants' unjust profits, as well as sums sufficient to compensate HRHH for all harm
4 suffered as a result of Defendants' conduct; (e) punitive damages; and (f) an award of
5 reasonable attorney fees and costs as provided under Chapter 93A.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, HRHH prays that this Court enter judgment against Defendants as
8 follows:

9 1. Finding that Defendants have violated 15 U.S.C. § 1125(a) and the
10 common law, have infringed the REHAB Marks under the common law and 15 U.S.C.
11 § 1114 and M.G.L. ch. 110H, have violated 15 U.S.C. § 1125(c)(1) and M.G.L. ch. 110H
12 by diluting the REHAB Marks, and have violated M.G.L. ch. 93A § 11 and the common
13 law by engaging in unlawful, unfair, and/or fraudulent business practices;

14 2. Ordering that Defendants and, as applicable, their officers, agents,
15 servants, directors, employees, servants, partners, representatives, assigns, successors,
16 related companies, and attorneys and all persons in active concert or participation with
17 Defendants or with any of the foregoing be enjoined preliminarily during the pendency of
18 this action and permanently thereafter from:

19 a. Manufacturing, transporting, promoting, importing, advertising,
20 publicizing, distributing, offering for sale, or selling any goods or services bearing or
21 offered under REHAB, the REHAB Marks, or any other mark, name, symbol, or logo
22 which is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation,
23 connection, or association of Defendants with HRHH or as to the origin, sponsorship, or
24 approval by HRHH of any goods or services manufactured, transported, promoted,
25 imported, advertised, publicized, distributed, offered for sale, or sold by Defendants –
26 including, but not limited to, Defendants' pool party, website and any other goods and
27 services related thereto;

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1 b. Manufacturing, transporting, promoting, importing, advertising,
2 publicizing, distributing, offering for sale, or selling any goods or services bearing or
3 offered under REHAB, the REHAB Marks, or any other mark, name, symbol, or logo that
4 is a copy or colorable imitation of, incorporates, or is confusingly similar to the REHAB
5 Marks;

6 c. Implying HRHH's approval, affiliation, connection, or sponsorship
7 of Defendants' goods, services, or commercial activities or engaging in any act or series
8 of acts which, either alone or in combination, constitutes unfair methods of competition
9 with HRHH and from otherwise interfering with or injuring the REHAB Marks or the
10 goodwill associated therewith;

11 d. Engaging in any act which is likely to dilute the distinctive quality
12 of the REHAB Marks and/or injures HRHH's business reputation;

13 e. Representing or implying that Defendants are in any way
14 sponsored, endorsed, or licensed by, or affiliated with, HRHH; or

15 f. Knowingly assisting, inducing, aiding, or abetting any other person
16 or business entity in engaging in or performing any of the activities referred to in
17 paragraphs 2(a) to (f) above.

18 3. Ordering that HRHH is the exclusive owner of the REHAB Marks and that
19 such marks are valid and protectable;

20 4. Ordering that Defendants be required to deliver to HRHH or destroy, as
21 applicable, all goods, packaging therefor, electronic images or media in any format,
22 promotional materials, advertisements or marketing materials which bear REHAB, the
23 REHAB Marks or any other trademarks, names, images logo, or packaging that are
24 confusingly similar to the REHAB Marks or are evocative of or draw an association,
25 affiliation, or connection with HRHH or the Rehab Pool Party.

26 5. Granting an award of damages suffered by HRHH according to proof at
27 the time of trial;

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6. Ordering that Defendants account to HRHH for any and all profits earned as a result of Defendants' acts of infringement in violation of Summit's rights under the Lanham Act, the Massachusetts General Laws, and the common law;

7. Granting an award of three times the amount of actual damages and increased profits pursuant to 15 U.S.C. § 1117, and M.G.L. ch. 110H § 14;

8. Granting an award of three times actual damages pursuant to M.G.L. ch. 93A § 11;

9. For pre-judgment interest on any recovery by HRHH;

10. Granting an award of HRHH's costs, expenses, and reasonable attorneys' fees; and

11. Granting such other and further relief as is just and proper.

JURY DEMAND

HRHH demands a trial by jury of all issues triable by jury.

HRHH Hotel/Casino, LLC and HRHH IP, LLC

Dated: May 13, 2015

/s/ Timothy J. Ervin
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